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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,562	08/09/2001	G. David Jang	S63.2-9950	6986

490 7590 04/03/2003

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

PREBILIC, PAUL B

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 04/03/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/925,562

Applicant(s)

JANG, G. DAVID

Examiner

Paul B. Prebilic

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 48 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new language "non-parallel" lacks original support from the specification, which did not use the terminology and did not explain its scope. For this reason, the terminology "non-parallel" is considered to be outside the scope of the invention as originally disclosed or contemplated by the Applicant.

Claim 48 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for connecting struts with "non-parallel" orientations of the figures, does not reasonably provide enablement for a zig-zag, curled, or helical orientation for the connecting struts. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 48 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention. The new language "non-parallel" is considered to be indefinite because it is unclear how to interpret it and what constitutes a "non-parallel" strut as claimed. The Examiner suggests using language from the original specification instead.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 34, 36, 39, 40, and 42-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Pinchasik et al (US 5,449,373). Pinchasik anticipates the claim language where the first, second and third expansion columns as claimed are the first, second, and third segments (102) of Pinchasik; see Figures 2A to 2C. Applicant is directed to that attached marked-up Figure 2C which shows the expansion struts of segments (102) in red. The other struts (in green) are not precluded by the present claim language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinchasik et al (US 5,449,373) alone. Pinchasik meets the claim language as set forth earlier but fails to disclose the claimed ratio. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to reduce the number of connectors, especially in view of the prior art shown in Figure 1 of Pinchasik, because Applicants have not disclosed that the claimed ratio has some advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicants' invention to perform equally well with fewer interconnectors so that the ratio would be 2 to 1 as claimed. Therefore, it would have been an obvious matter of design choice to modify Pinchasik to obtain the invention as specified in the claims.

Claims 34, 37-40, and 42-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al (US 6,348,065), or alternatively, as being unpatentable over Brown et al (US 6,348,065) in view of Pinchasik et al (US 5,449,373).

Brown anticipates the claim language where it is clearly made of a thin walled metal tube (see column 3, lines 13-17), the first, second and third expansion columns are met by the adjacent segments (16) of Brown (see Figures 1 to 5), the connecting strut columns as claimed are made up of interconnecting elements (20) between segments (16), and the curved region of the segments as claimed are the segments of Brown, which connect adjacent struts (19a, 19b). These segments (19a, 19b) can be considered to be part of the interconnecting element (20).

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Alternatively, one could view Brown as not anticipating the claim language because one could say that elements (19a, 19b) are not part of the connecting elements. However, Pinchasik teaches that it was known to make curved interconnectors between adjacent segments; see Figures 2A to 2C and 3A to 3C. Therefore, the Examiner posits that it would have been obvious to make the interconnectors of Brown curved for the same reasons that Pinchasik does the same and in order to better support the area between the segments.

Response to Arguments

The arguments set forth in the February 10, 2003 amendment are considered moot in view of the manner in which the Pinchasik reference is now being applied. In particular, the first, second, and third expansion struts as claimed read on the red highlighted segments set forth in the attached Figure 2C.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Prebilic whose telephone number is (703) 308-2905. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax phone number for this Technology Center is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 3700 receptionist whose telephone number is (703) 308-0858.



Paul Prebilic
Primary Examiner
Art Unit 3738

FIG.2A

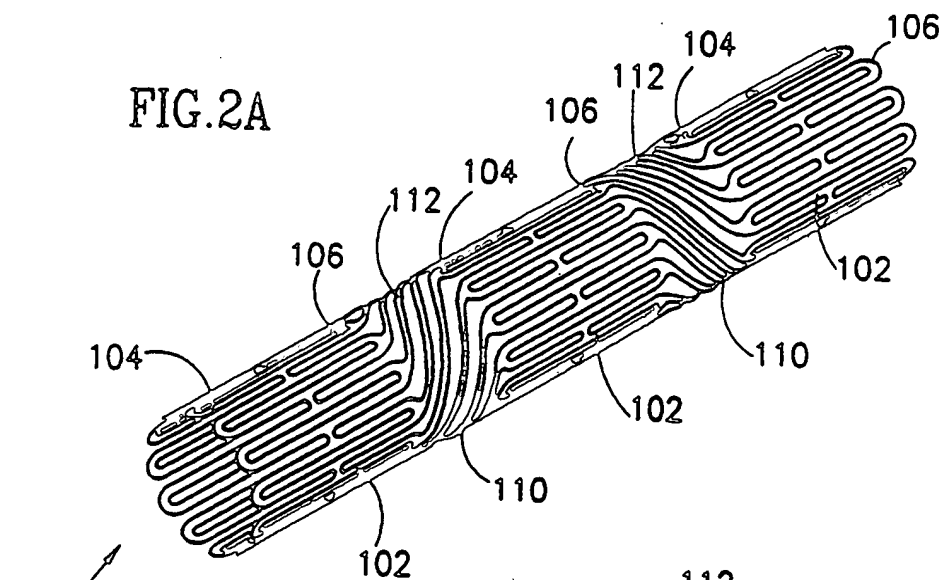


FIG.2B

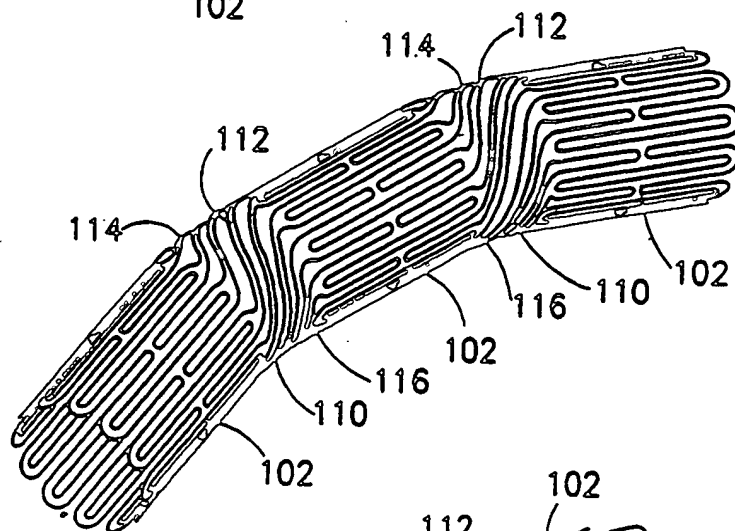


FIG.2C

